

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered into between the United States of America (“the United States”), acting by and through the United States Attorney’s Office for the Eastern District of Pennsylvania, on behalf of the Office of Inspector General of the United States Department of Health and Human Services (“HHS-OIG”); and Corrections Pharmacies, LLC, formerly known as Stadtlander Operating Co. LLC; and the *qui tam* relator, Mary Ellen Rea (“Relator”), through their authorized representatives (hereafter all of the above, referred to as the “Parties”).

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Correction Pharmacies, LLC, formerly known as Stadtlander Operating Company LLC, is a Delaware corporation. Stadtlander Operating Co., LLC was formerly known as Stadtlander Drug Distribution Company (collectively “Stadtlander”).

B. Stadtlander submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and various state Medical Assistance Programs (“Medicaid”), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, through the submission of invoices for prescription drugs for patients.

C. On April 22, 1994, the Relator filed a *qui tam* complaint under seal, alleging violations of the False Claims Act by Stadtlander in the case captioned *United States of America ex rel. Mary Ellen Rea v. Stadtlander Drug Company, Inc., et al.*, Civ. No. 94-2495 (E.D. Pa.) (“the Civil Action”). Thereafter, the United States investigated the allegations raised in the *qui tam* action and is prepared to intervene. The United States contends that it has certain claims and remedies against Stadtlander for allegedly engaging in a pattern and practice of knowingly falsely and fraudulently claiming simultaneous reimbursement from Medicare, Medicaid and/or third party private insurers for prescription medication, as set forth in Paragraph D.

D. The United States contends that, from 1989 through 1998, Stadtlander knowingly claimed or caused to be claimed for simultaneous reimbursement by Medicare, Medicaid and/or third party private insurers billings for prescription medication and failed to make proper refunds to the United States when such amounts were due.

E. The Acts referred to in Paragraphs C and D, and any and all claims made by relator in the above-captioned matter, are hereafter referred to as the Released Acts (“Released Acts”).

F. Correction Pharmacies and Stadtlander deny the allegations of the United States as set forth in Paragraphs C through E above, as well as the remaining allegations set out in the Civil Action.

G. In order to avoid the disruption, delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties have agreed to a full and final settlement as set forth below. This Settlement Agreement shall not be construed as an admission of any liability or wrongdoing on the part of Correction Pharmacies and Stadtlander.

H. Relator and her counsel agree that this Settlement Agreement is fair, adequate, and reasonable, and further agree that they accept the terms of the Settlement Agreement as to them and that they will refrain from objecting, under 31 U.S.C. § 3730(c), to the terms of the Settlement Agreement.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Correction Pharmacies agrees to pay the United States a total of \$850,000 (the "Settlement Amount"). Payment of the Settlement Amount by Correction Pharmacies shall be made by electronic funds transfer, pursuant to written instructions provided by the United States Attorney's Office, within thirty (30) days following the Effective Date of this Settlement Agreement.

2. The Parties agree that dissolution of Correction Pharmacies prior to payment in full of the Settlement Amount or Correction Pharmacies' failure to pay the Settlement Amount as required by this paragraph renders this Agreement null and void.

3. It is expressly understood by the Parties that the releases granted by the United States and the Relator pursuant to Paragraphs 4, 5, 10, 13 and 16 below, are conditioned upon payment in full of the Settlement Amount and payment to Relator's Counsel as specified in Paragraph 9.

4. Subject to the exceptions in Paragraphs 5 and 7 below, and in consideration of and conditioned upon the fulfillment of the obligations of Correction Pharmacies set forth in this Agreement, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Correction Pharmacies and Stadtlander and its current and former owners, parents, shareholders, officers, directors, employees, affiliates, divisions, subsidiaries, predecessors, successors, assigns and transferees, including the named defendants in the above-captioned matter as follows, Stadtlander Drug Co., Inc., Stadtlanders Pharmacy, Stadtlanders Pharmacy Lifetime Program and Gregg Perelman, (“the Released Parties”), from any and all civil or administrative monetary claims or causes of action the United States has or may have against any of them under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and common law theories of, including but not limited to, fraud, unjust enrichment, payment by mistake and breach of contract for the Released Acts.

5. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

- (a) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) Any criminal liability for the Released Acts;
- (c) Any liability to the United States (or its agencies) for any conduct other than the Released Acts;

(d) Any claims based upon any failure to fulfill the obligations created by this Settlement Agreement;

(e) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of Stadtlander who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorney's Manual), are criminally indicted or charged, and are convicted, or who enter into a criminal plea agreement related to the Released Conduct;

(f) Any administrative liability, except as explicitly stated.

6. Concurrent with the execution of this Settlement Agreement, the United States shall intervene in the Civil Action captioned *United States of America ex rel. Mary Ellen Rea v. Stadtlander Drug Company et al.*, Civ. No. 94-2495 (E.D. Pa.). Also concurrently, the United States and the Relator shall file a Notice of Voluntary Dismissal of the Civil Action, with prejudice.

7. In consideration of and conditioned upon the fulfillment of the obligations of Correction Pharmacies set forth in this Agreement, HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare program, Medicaid program, or any other Federal health care program, as defined in 42 U.S.C. § 1320a-7b(f), against Correction Pharmacies, Stadtlander, and its current and former owners, parents, shareholders, affiliates, divisions, subsidiaries, predecessors, successors, assigns and transferees, including the named defendants in the above captioned matter under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b) (permissive exclusion), for the Released Acts, except as reserved in Paragraph 5 above. HHS-OIG expressly reserves all

rights to comply with any statutory obligations to exclude Stadtlander from the Medicare, Medicaid, or other Federal health care program under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Released Acts. Nothing in this paragraph precludes HHS-OIG from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 5 above.

8. Correction Pharmacies represents that Stadtlander no longer engages in any business that seeks reimbursement from any Federal health care program. If Stadtlander plans to engage in any Federal health care business at any time within five years of the effective date of this Agreement, it shall notify the OIG promptly and enter into a Corporate Integrity Agreement satisfactory to the OIG that at a minimum includes provisions requiring the development of compliance policies and procedures, annual training regarding those policies and procedures, annual claims reviews by an Independent Review Organization, and annual reporting to the OIG. Such Corporate Integrity Agreement will be in effect for the remainder of the five year period.

9. The United States shall pay the Relator twenty percent (20%) of the federal share of the Settlement Amount within a reasonable time after receipt of same, for a total relator share, inclusive of interest, of \$ 144,020 (“the Relator Share”), by electronic funds transfer. Correction Pharmacies will pay the Relator’s counsel a total sum of \$220,000 (“the Relator attorney fee”) by electronic fund transfer pursuant to written instructions provided by Relator’s counsel no later than thirty (30) days following the Effective Date of this Agreement as satisfaction in full of all attorneys’ fees, costs and expenses incurred by the Relator and counsel, pursuant to 31 U.S.C. § 3730(d).

10. The Relator and Correction Pharmacies agree that the Relator Share and the Relator attorneys' fee, referenced in Paragraph 9 above, shall be in full satisfaction of all claims, known or unknown, that the Relator may have against the Released Parties, and is inclusive of all claims the Relator, successors and assigns, or counsel may have for attorneys' fees, costs and expenses in connection with the Civil Action or any other theory. For and in consideration of such payment, the Relator, for herself and her heirs, successors, and assigns, releases and forever discharges the Released Parties from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, whether or not known or suspected at this time, which the Relator ever had, owned or held or hereafter can, shall or may have against the Released Parties.

The Released Parties release and forever discharge Relator and her heirs, successors, assigns, attorneys and agents, from any and all actions, claims, causes of action, suits, charges, demands, debts, liabilities, past, present or future obligations, damages, judgments, executions, accounts, sums of money, reckonings, controversies, losses, actions and causes of action of every kind and nature whatsoever, whether or not known or suspected at this time, which the Released Parties ever had, owned or held or hereafter can, shall or may have against the Relator for acts or omission occurring prior to the Effective Date of this Agreement.

11. Relator agrees to release the United States, its officers, agents and employees, from any liability arising from the filing of the Civil Action, including any claims to a share of the proceeds pursuant to 31 U.S.C. § 3730(d), subject to receipt of the Relator Share, as described in Paragraph 9 above.

12. Nothing in any provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

13. The United States agrees to return all documents and other property seized from Stadtlander in the course of its investigation within thirty (30) days of the Effective Date of this Agreement.

14. Stadtlander agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Stadtlander, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be “unallowable costs” on contracts with the United States and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (“FEHBP”):

- (1) the matters covered by this Agreement;
- (2) the United States’ audit(s) and investigation(s) of the matters covered by this Agreement;

(3) Stadtländer's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

(4) the negotiation and performance of the Agreement; and

(5) the payment Stadtländer makes to the United States pursuant to this Agreement, including any costs and attorneys' fees.

However, nothing in this paragraph affects the status of costs that are not allowable based on any other authority applicable to Stadtländer.

(b) Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Stadtländer, and Stadtländer shall not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by Stadtländer or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Stadtländer further agrees that within 90 days of the Effective Date of this Agreement, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Stadtländer or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports,

or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Stadtlander agrees that the United States, at a minimum, shall be entitled to recoup from Stadtlander any overpayment plus applicable interest and penalties as a result of the inclusion of such unallowable costs on previously submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Stadtlander or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) or Stadtlander's or any of its subsidiaries' cost reports, information reports or cost statements. Nothing in this agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

15. Correction Pharmacies agrees to cooperate fully and truthfully with any investigation by the United States to enforce the provisions of this Agreement. Such cooperation by Correction Pharmacies will require that, upon reasonable notice, Correction Pharmacies will make reasonable efforts to facilitate access to, and will not impede the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody or control that could assist the United States in its enforcement of this Agreement.

16. Except as otherwise provided herein, this Agreement is intended to be for the sole benefit of the Parties and, by this instrument, the Parties do not release any claims against any other person or entity.

17. The Parties agree that this Agreement does not constitute an admission by any person or entity with respect to any allegation raised in the Civil Action or any issue of law or fact.

18. The United States and Correction Pharmacies will both bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

19. Correction Pharmacies represents that it has entered into this Agreement freely and voluntarily.

20. Relator represents that she has entered into this Agreement freely and voluntarily.

21. This Settlement Agreement is governed by the laws of the United States. Should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Eastern District of Pennsylvania.

22. This Agreement constitutes the complete agreement among the Parties. This Agreement may be amended only by the express written consent of all of the Parties to the proposed amendments.

23. The undersigned Correction Pharmacies signatory represents and warrants that he is authorized to execute this Agreement on behalf of Correction Pharmacies and Stadtlander. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and warrant that they are authorized to execute this Settlement Agreement.

24. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

25. Nothing in this Agreement, or any communication or report made pursuant to this Agreement, shall constitute or be construed as any waiver by the Parties of the Parties' respective attorney-client, work product or other applicable privileges.

26. The United States agrees that the documents produced in this matter by Correction Pharmacies, Stadtlander or their parent companies contain confidential, proprietary or trade secret information which the United States shall protect to the full extent provided and required by law. The United States shall promptly notify Correction Pharmacies of any request or order, to the Freedom of Information Act ("FOIA") or otherwise, for the release of any information provided by Correction Pharmacies, Stadtlander or their parent companies in connection with the United States' investigation and/or pursuant to this Agreement. Further, the United States shall comply with the provisions of FOIA in connection with all information produced by Correction Pharmacies, Stadtlander or their parent companies, and shall to the extent permitted by law, resist the disclosure of any such information pursuant to FOIA. Nothing in this Agreement shall be construed to prohibit the United States from providing information to the United States Congress, any department or agency of the United States, or any State charged with enforcing the laws

against health care fraud if the information relates to matters within the jurisdiction of Congress or a department or agency of the United States.

27. Notification, when required under this Agreement, shall be made to the undersigned counsel for the individual parties, except that notifications to the United States shall be made to K.T. Tomlinson, Assistant United States Attorney, United States Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; and notifications to HHS-OIG shall be made to Administrative & Civil Remedies Branch – Office of Counsel to the Inspector General, Office of Inspector General, Department of Health and Human Services, Cohen Bldg., Room 5527, 330 Independence Avenue, S.W., Washington, DC 20201.

28. The Effective Date of this Agreement shall be the date that the last signature to the Agreement is executed.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
VIRGINIA A. GIBSON
Chief, Civil Division
United States Attorney's Office
Eastern District of Pennsylvania

DATED: _____

BY: _____
K.T. TOMLINSON
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____
LEWIS MORRIS
Chief Counsel to the Inspector General
Office of Inspector General
United States Department of
Health and Human Services

CORRECTIONS PHARMACIES LLC

DATED: _____

BY: _____
WILLIAM D. SPRAGUE
Senior Vice President
Corrections Pharmacies, LLC

DATED: _____

BY: _____
CAROLYN SHORT, ESQUIRE
REED SMITH LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, Pennsylvania 19103

RELATOR

DATED: _____

BY: _____
MARY ELLEN REA

DATED: _____

BY: _____
JAMES WHELTON, ESQUIRE

DATED: _____

BY: _____
LINDA KRAHE, ESQUIRE
Counsel for Relators